National Energy Board

Office national de l'énergie

# Reasons for Decision

## Enbridge Pipelines Inc.

## RH-1-2005

June 2005

Tolls

Canada

National Energy Board

# Reasons for Decision

In the Matter of

## Enbridge Pipelines Inc.

Applications dated 7 January 2005 and 8 February 2005 for orders pursuant to Part IV of the *National Energy Board Act*

## RH-1-2005

**June 2005**

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# Glossary of Terms

| | |
|---|---|
| Act or NEB Act | *National Energy Board Act* |
| b/d | barrels per day |
| Board or NEB | National Energy Board |
| BP | BP Pipeline (North America) Inc. |
| CCPS | CCPS Transportation, L.L.C. |
| CAPP | Canadian Association of Petroleum Producers |
| crude oil and equivalent | a collective term referring to all liquid hydrocarbons that require processing at a refinery including: conventional light and heavy crude oil produced at oil wells; pentanes and heavier hydrocarbons generally produced as a result of natural gas production or processing; synthetic crude oil produced through partial refining at upgraders; and bitumen recovered in-situ at a well-bore |
| differential or light-heavy differential | the difference between the price of light and heavy crude oil |
| Enbridge or the Applicant | Enbridge Pipelines Inc. |
| Enbridge mainline or system or Canadian mainline | the Canadian oil pipeline owned by Enbridge that extends from Edmonton, Alberta to the Canada-U.S. Border near Gretna, Manitoba |
| Express | Express Pipeline Ltd. |
| Express pipeline | the crude oil pipeline system owned by Express that transports crude oil from Hardisty, Alberta to Casper, Wyoming |
| FERC or Commission | Federal Energy Regulatory Commission (U.S.) |
| Flint Hills | Flint Hills Resources |
| Gateway | a proposed new Enbridge pipeline that would extend from Edmonton, Alberta to Prince Rupert or Kitimat, British Columbia |
| Guidelines | NEB Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs |
| heavy crude oil | a collective term that includes conventional heavy crude oil and bitumen |

| | |
|---|---|
| ITS 2000 | Incentive Toll Principles of Settlement for the Years 2000 – 2004 agreement between Enbridge and CAPP for transportation on the Enbridge mainline |
| Lakehead or Lakehead system | the U.S. crude petroleum pipeline system owned by Enbridge Energy, Limited Partnership [previously Lakehead Pipe Line Partners, L.P.] that interconnects with the Enbridge mainline near Gretna, Manitoba and reconnects with Enbridge's Line 9 at Sarnia, Ontario |
| $m^3/d$ | cubic metres per day |
| Mobil or MPLCO | Mobil Pipe Line Company |
| Mobil or MPLCO 20" pipeline | the 20" crude oil pipeline owned by MPLCO that extends from the Nederland/Beaumont area in Texas to Corsicana, Texas together with the 20" pipeline owned by MPLCO that extends from Corsicana to Patoka, Illinois |
| Mustang or Mustang pipeline | a crude oil pipeline system owned by Enbridge Holdings (Mustang) Inc. [30%] and Mobil Illinois Pipeline Company [70%] that receives crude oil from Lakehead at Lockport, Illinois for delivery to connecting carriers at Patoka, Illinois |
| NRA | Non-Routine Adjustment to the Annual Revenue Requirement as provided for in section 7 of the ITS 2000 |
| netback | the per unit price received by a producer from the sale of crude oil, less applicable costs including transportation and marketing fees |
| PADD | U.S. Petroleum Administration for Defense District |
| Platte or Platte Pipeline | an oil pipeline owned by Terasen that interconnects with the Express pipeline at Casper, Wyoming and extends to Wood River, Illinois |
| Spearhead or Spearhead Pipeline | an oil pipeline, owned 90% by Enbridge, that will connect to the Lakehead system and is proposed to provide north-south service from Chicago, Illinois to the market hub in Cushing, Oklahoma |

| | |
|---|---|
| Spearhead Reversal Project | a proposed project to reverse a largely idle pipeline system that was used to transport crude oil from Cushing, Oklahoma to Chicago, Illinois (the CCPS Pipeline) in order to permit access for Canadian crude petroleum to southern PADD II markets |
| stranded barrel | a barrel of crude oil that is capable of being produced but is left in place due to pipeline capacity or market constraints |
| Terasen | Terasen Pipelines Inc. |
| 20" Reversal Project | a proposed project to reactivate MPLCO's Patoka, Illinois to Corsicana, Texas 20" pipeline segment and reverse MPLCO's entire 20" system between Patoka and the Beaumont/Nederland area in Texas to enable Canadian crude oil to move into the U.S. Gulf Coast in PADD III |
| $US | United States dollars |
| West Texas Intermediate | a light sweet crude oil produced in the U.S. that is commonly used as a benchmark for North American crude oil price quotations |
| WoodPat | an oil pipeline owned by Marathon Ashland LLP that delivers crude oil from Wood River, Illinois to Patoka, Illinois |

## Recital and Appearances

**IN THE MATTER OF** the *National Energy Board Act* and the Regulations made thereunder; and

**IN THE MATTER OF** applications filed with the National Energy Board by Enbridge Pipelines Inc. (Enbridge) under Files 4200-E101-6 and 4200-E101-7 for certain orders respecting tolls pursuant to Part IV of the Act; and

**IN THE MATTER OF** Hearing RH-1-2005;

Heard in Calgary, Alberta on 7, 8, 11, 12 April 2005;

BEFORE:

| | |
|---|---|
| K.W. Vollman | Presiding Member |
| J.S. Bulger | Member |
| E. Quarshie | Member |

| Appearances | Participants | Witnesses |
|---|---|---|
| C.A. Low | Enbridge Pipelines Inc. | T. Martenak<br>A. McNight<br>M. Perret<br>R. Sandahl<br>W. Schrage |
| N.J. Schultz | Canadian Association of Petroleum Producers | R. Cusson<br>O. DeVries |
| P. Kahler | BP Canada Energy Company | |
| D. Sirrs | Devon Canada Corporation | |
| D. Castellino | EnCana Corporation | |
| K.F. Miller | Flint Hill Resources | |
| D. Armstrong | Imperial Oil | |
| T. Hergott | Marathon Ashland Petroleum Canada Ltd. | |
| T.M. Hughes | Mobil Pipe Line Company | |
| D. Langen | Shell Canada Limited | |

| Appearances | Participants | Witnesses |
|---|---|---|
| J. Van Heyst | Suncor Energy Marketing Inc. | |
| D.A. Holgate | Terasen Pipelines Inc. | R. Ballantyne<br>W. Henderson |
| J. Forrest | TransCanada Keystone Pipeline Ltd. | |
| J. Forrest | TransCanada PipeLines Limited | |
| R.M. Zanin<br>A. Ross | National Energy Board | |

## Chapter 1

# Introduction

### 1.1 Applications

Pursuant to Part IV of the *National Energy Board Act* (Act), and the Board's *Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs* (Guidelines), Enbridge Pipelines Inc. (Enbridge) filed an application on 7 January 2005 for the approval of the implementation of a Non-Routine Adjustment (NRA) in accordance with section 7.1(A)(i) of the Incentive Toll Principles of Settlement for the Years 2000-2004 (2000 ITS), or such equivalent mechanism or surcharge as may be found in any successor agreement relating to tolls (Spearhead NRA).

The purpose of the proposed Spearhead NRA is to provide financial support to an initiative to extend service into the Cushing, Oklahoma area (Figure 1-1). Specifically, Enbridge requested approval of an NRA to collect $US 10 million a year for five years from shippers on its Canadian mainline system that it would transfer to the Spearhead Pipeline Project.

The proposal for the Spearhead NRA was the result of dialogue between Enbridge and the Canadian Association of Petroleum Producers (CAPP) that had been ongoing for more than a year. With a targeted in-service date of 1 January 2006, Enbridge stated that the Spearhead initiative would provide benefits to its shippers commencing in 2006 and well into the future.

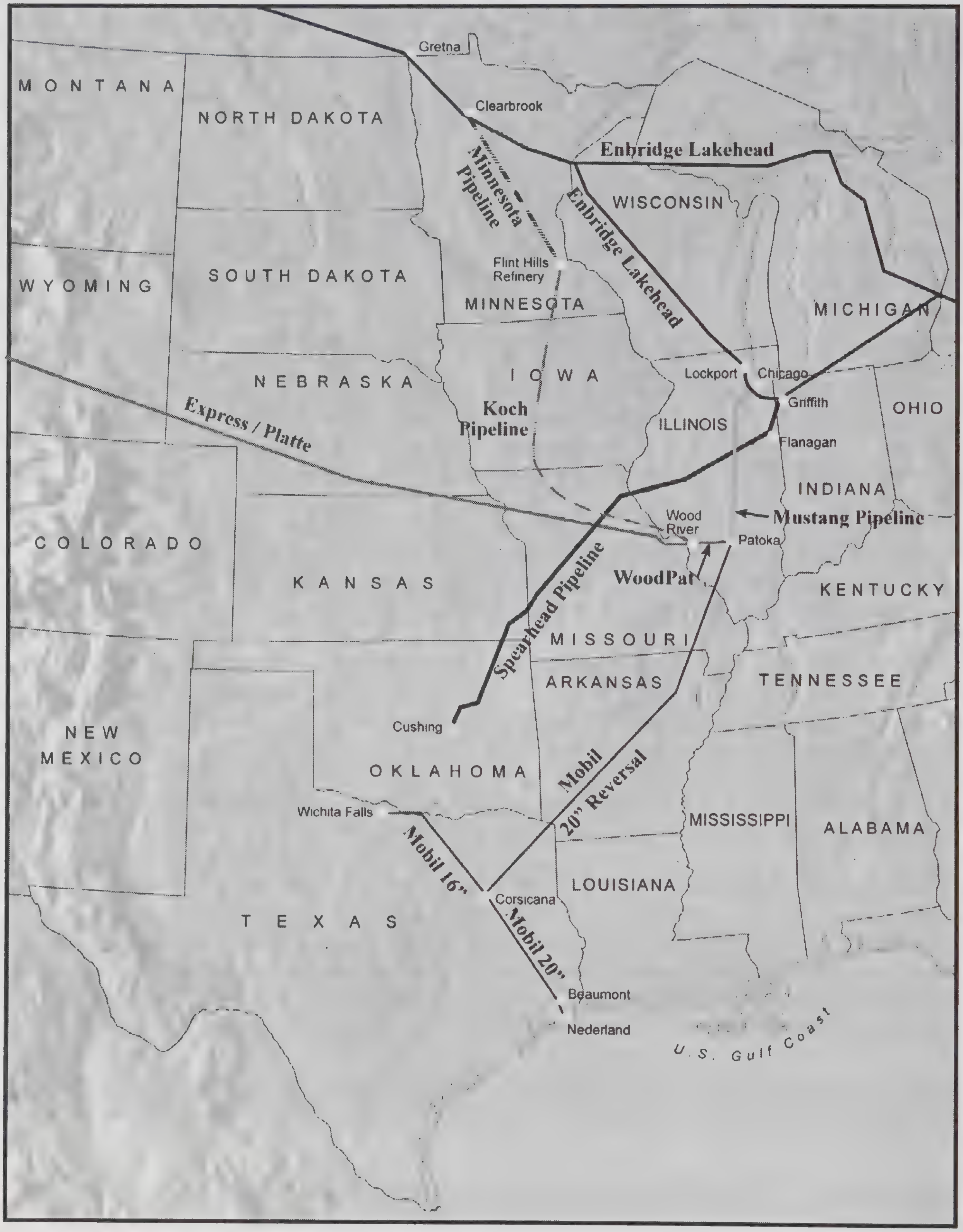
Subsequent to Enbridge filing this application, Flint Hills Resources (Flint Hills) indicated by letter to the Board dated 14 January 2005, its intention to contest the settlement. By letter dated 18 January 2005, Enbridge requested the Board to proceed with the application in accordance with the contested settlement provisions of the Guidelines.

On 21 January 2005, the Board issued a letter which established a process for the consideration of the application with an oral hearing commencing 29 March 2005.

On 8 February 2005, Enbridge filed another application pursuant to Part IV of the Act and the Guidelines for an order to approve the proposed implementation of a second NRA pursuant to section 7.1(A)(i) of the 2000 ITS, or such equivalent mechanism or surcharge as may be found in any successor agreement relating to tolls for crude oil transportation service between Enbridge and CAPP (20" Reversal NRA). The purpose of the proposed 20" Reversal NRA is to provide financial support to an initiative to extend service into the U.S. Gulf Coast (Figure 1-1). Specifically, Enbridge requested approval of an NRA to collect $US 10 million a year for five years from shippers on its Canadian mainline system that it would transfer to Mobil. The target in-service date is the fourth quarter of 2005, subject to NEB approval of the proposed financial support by mid April 2005.

Enbridge indicated in its application that Flint Hills was expected to intervene in the matter.

**Figure 1-1**
**Spearhead and Mobil 20" Reversal System Map**



On 17 February 2005, the Board issued a letter notifying parties that the application for the 20" Reversal NRA would be considered together with the application for the Spearhead NRA at an oral hearing commencing on 7 April 2005.

## 1.2 Background

The Enbridge Canadian mainline extends from Edmonton, Alberta to the Canada-United States border near Gretna, Manitoba where it connects with the Lakehead pipeline system to provide continuous transportation service to markets in the U.S. (Figure 1-1). Lakehead is owned by Enbridge Energy Limited Partnership, an Enbridge affiliate.

Enbridge provided evidence that in-situ bitumen and synthetic oil production from the oil sands in western Canada could double by the year 2015, an increase of approximately one million b/d (158 983 $m^3$/d) over current production levels. In anticipation of this significant increase in oil sands production and the corresponding need to provide access to markets, Enbridge proposes to expand its service to southern PADD II and PADD III.

In September 2003, Enbridge acquired a 90 percent interest in CCPS Transportation, L.L.C. (CCPS) which owns the CCPS Pipeline assets, a largely idle pipeline system that formerly transported crude oil north from Cushing, Oklahoma to Chicago, Illinois. Enbridge acquired its interest in CCPS with the intention of investing the necessary capital to redeploy the CCPS assets to provide a new north-south service from the Chicago area to the market hub in Cushing in order to permit Canadian crude oil access to that market hub via a trunk line system, a more direct and efficient route than currently available. The resulting reconfigured pipeline to be known as the Spearhead Pipeline would provide access to southern PADD II markets for Canadian crude oil (Figure 1-1). Enbridge also has the option to acquire the remaining 10 percent interest from the current holder, BP Pipelines (North America) Inc (BP).

Enbridge indicated that initially receipts on the Spearhead Pipeline from Lakehead would be at Griffith, Indiana and transportation would be provided on Spearhead to the inlet of the Enbridge Pipelines (Ozark) L.L.C. terminal at Cushing, Oklahoma.

The initial capacity of the Spearhead Pipeline is estimated to be 125,000 b/d (19 840 $m^3$/d), assuming a 50/50 light-heavy crude oil slate, expandable by 40,000 b/d (6 350 $m^3$/d) through the addition of pumping facilities. Enbridge anticipated that 100% of the crude oil shipped on the Spearhead Pipeline would be western Canadian produced crude oil, although the possibility existed that some U.S. domestic or foreign crude oil could also be shipped.

The estimated capital investment required to reverse the flow of the CCPS Pipeline is $US 41.6 million. Enbridge stated that traditional cost-of-service based tolls calculated in accordance with the U.S. Federal Energy Regulatory Commission (FERC) methodology would be $US 1.99/barrel ($US 12.54/$m^3$). Enbridge indicated that prospective Canadian producers were very clear in discussion with Enbridge that tolls at that level would not attract volumes to the Spearhead pipeline.

Spearhead shipper support was secured through an Open Season process that concluded on 26 November 2004. The toll structure for which Enbridge received approval from the FERC was:

- \$US 0.85/barrel (\$US 5.35/m³) for between 5,000 b/d (795 m³/d) to 9,999 b/d (1 589 m³/d) of committed volumes for 10 years; and
- \$US 0.75/barrel (\$US 4.72/m³) for 10,000 b/d (1 590 m³/d) or more of committed volumes for 10 years, and
- \$US 1.50/barrel (\$US 9.44/m³) for uncommitted volumes.

In its application, Enbridge forecasted that, if no incremental volumes were attracted to the Enbridge mainline as a result of the Spearhead Reversal Project, the maximum toll impact would be approximately \$0.022/barrel (\$0.14/cubic metre). It further stated that if incremental volumes of 45,000 b/d (7 154 m³/d) move on the Enbridge system there is expected to be a negligible to no toll effect for shippers resulting from the Spearhead NRA and that incremental volumes greater than 45,000 b/d (7 154 m³/d) would result in a toll reduction.[1]

MPLCO currently owns an idle 20" pipeline that traditionally moved crude oil northward from Corsicana, Texas to Patoka, Illinois. The Mobil 20" pipeline currently provides south to north service from Nederland/Beaumont to Corsicana (Figure 1-1). In response to requests from Canadian producers for increased access to alternative markets, and with shipper support of more than 50,000 b/d (7 949 m³/d) of committed volumes from Patoka to the U.S. Gulf Coast, MPLCO stated its plans to reactivate the Patoka to Corsicana pipeline segment and reverse the entire 20" system to move crude oil to the Gulf Coast, providing Enbridge receives NEB approval of the proposed 20" Reversal NRA.

The reversed MPLCO 20" pipeline could receive Canadian crude oil at Patoka, Illinois from both the Marathon Ashland LLP WoodPat Pipeline (WoodPat) and the Mustang Pipe Line Partners' pipeline (Mustang). Mustang receives crude oil from the Lakehead system at Lockport, Illinois for delivery to connecting carriers at Patoka. Canadian crude oil transported on Enbridge's Canadian mainline and Lakehead system would access the MPLCO 20" pipeline from Mustang at Patoka (Figure 1-1). From Patoka, the reversed MPLCO 20" pipeline would transport western Canadian crude oil volumes through Corsicana Station in Texas to markets in the Nederland/Beaumont area in the Louisiana Gulf Coast region of PADD III. At Corsicana, volumes could also be directed to Ringgold Station, Texas and Wichita Falls, Texas through an existing 16" pipeline owned by MPLCO.

The estimated capital cost to reverse the MPLCO 20" pipeline is \$US 22.5 million. According to MPLCO, the traditional cost-of-service based tolls for the 20" Reversal would be \$US 1.10/barrel (\$US 6.92/m³) and prospective shippers and Canadian producers were very clear that tolls at that level would not attract volumes. CAPP members agreed that financial support for the project in the form of the 20" NRA proposal is desirable during the five-year start-up phase in order to ensure that the project proceeds in a timely fashion so that the capacity and

1 The currently approved toll for transportation of heavy petroleum from Edmonton, Alberta to Gretna, Manitoba, including terminalling and tankage charges, is approximately \$1.40/barrel (\$8.823/m³).

access to US Gulf Coast PADD III markets is available as and when required by shippers of Canadian crude oil.

Enbridge indicated that, if no incremental volumes were attracted to the Enbridge mainline as a result of the 20” Reversal Project, the maximum toll impact would be approximately \$0.022/barrel (\$0.14/$m^3$), and that if incremental volumes of 45,000 b/d (7 154 $m^3$/d) move on the Enbridge system, there is expected to be a negligible to no toll effect for shippers resulting from the 20” Reversal NRA and that incremental volumes greater than 45,000 b/d (7 154 $m^3$/d) would result in a toll reduction.

In respect of both applications, Enbridge indicated that the funds to be collected in tolls would be calculated in Canadian funds and subject to true-up for exchange rate and volume differences. In respect of the 20” Reversal NRA, the amounts to be collected in tolls would also include indirect costs incurred by Enbridge including costs associated with regulatory filings or proceedings.

Enbridge stated that both reversal projects would provide benefits to Canadian shippers commencing on the in-service date and well into the future. Both applications are supported by CAPP.

**Application Summary**

| | **Spearhead Project** | **20" Reversal Project** |
|---|---|---|
| ownership | Enbridge (90 percent)<br>BP (10 percent) | Mobil |
| route | Chicago, Illinois to Cushing, Oklahoma | Patoka, Illinois to the Gulf Coast |
| capacity | 125,000 b/d (19 873 $m^3$/d) expandable to 165,000 b/d (25 400 $m^3$/d) | 65,000 b/d (10 334 $m^3$/d) |
| length | 650 miles (1 050 kilometres) | 850 miles (1 360 kilometres) |
| target in-service date | 1 January 2006 | 4th quarter 2005 |
| markets accessed | Cushing, Oklahoma area refineries in southern PADD II | Gulf Coast in PADD III |
| refining capacity in new markets | 800,000 b/d (127 186 $m^3$/d) | in excess of 6 million b/d (953 895 $m^3$/d) |
| cost | \$US 41.6 million | \$US 22.5 million |
| Applicant’s projected pipeline toll without financial support | \$US 1.99/barrel (\$US 12.52/$m^3$) | \$US 1.10/barrel (\$US 6.92/$m^3$) |

| | **Spearhead Project** | **20" Reversal Project** |
|---|---|---|
| Proposed pipeline toll | \$US 0.85/barrel (\$US 12.52/ m³) for 5,000 b/d (795 m³/d) to 9,999 b/d (1589 m³/d) committed for 10 years<br>\$US 0.75/barrel (\$US 4.72/m³) for 10,000 b/d (1 590 m³/d) or more committed for 10 years<br>\$US 1.50/barrel (\$US 9.44/ cubic metre) for uncommitted volumes | \$US 0.565/barrel (\$US 3.55/m³) for 50,000 b/d (7 949 m³/d) to 54,999 b/d (8 744 m³/d) committed for 5 years<br>\$US 0.555/barrel (\$US 3.49/m³)for 55,000 b/d (8 744 m³/d) to 59,000 b/d (9 380 m³/d) committed for 5 years<br>\$US 1.10/barrel (\$US 6.92/m³) for uncommitted volumes |
| requested NRA adjustment | \$US 10 million per year for 5 years | \$US 10 million per year for 5 years, plus indirect costs incurred by Enbridge |
| toll impact on Canadian mainline | \$0.022/barrel (\$0.14/ m³)<br>little or no toll effect with incremental volumes of 45,000 b/d (7 154 m³/d) or greater | \$0.022/barrel (\$0.14/ m³)<br>little or no toll effect with incremental volumes of 45,000 b/d (7 154 m³/d) or greater |

Source: Enbridge applications

## Chapter 2

# Submissions

## 2.1 Enbridge

Enbridge submitted that there is an opportunity to secure access to two new markets for Canadian crude oil: Cushing, Oklahoma, where area refiners run over 800,000 b/d (127 186 m³/d) of crude oil and the U.S. Gulf Coast region where refining capacity is in excess of 6 million b/d (953 895 m³/d). Access to these markets would provide benefits for shippers on the Enbridge system and for western Canadian producers. Enbridge argued that these opportunities would be lost if not acted upon in a timely manner.

Enbridge anticipates a significant increase in oil sands production over the next five to seven years and the need to provide access to markets to accommodate the production growth. Enbridge noted that, as price takers in a competitive commodity market, producers see the impact of pipeline costs and restricted access to markets in netback prices. Enbridge confirmed that there is sufficient capacity on its system to accommodate both the Spearhead and 20" reversal projects. However, it noted that producers currently face market access constraints resulting in a situation where producers have to accept a much lower price for Canadian heavy crude oil than would otherwise be expected. Enbridge expected that access to the new markets would result in additional demand by refiners. This would have a moderating effect on price differentials between Canadian light and heavy crude oil, resulting in improved netbacks for Canadian producers.

Enbridge submitted that both the Spearhead and the 20" reversal projects enjoy a broad base of support. Shippers on the two projects have indicated their support and willingness to share risk through commitments to ship or pay 60,000 b/d (9 539 m³/d) for ten years on the Spearhead Pipeline, and 50,000 b/d (7 949 m³/d) for five years on the 20" Reversal Project. Enbridge further submitted that the respective pipelines are taking the risk that sufficient volumes will move on the systems to make them economic after the five-year term of the proposed NRAs. Enbridge argued that all but one of its shippers either support, or do not oppose the NRA applications and that CAPP has committed its support for each application. Enbridge also submitted that it is the producers who effectively bear the cost of transportation on the Enbridge system.

Enbridge noted that CAPP members represent 83 percent of the volumes shipped on the Enbridge system, and that non-CAPP members, who represent the remaining 17 percent of Enbridge shipments, have not contested the NRA applications. Enbridge indicated that Flint Hills, the only shipper that opposed the applications, had the opportunity to make its case in the current proceeding but did not present evidence that would establish any disadvantages to the proposed approach, or negative impacts on Flint Hills. Enbridge questioned whether, to the extent market access initiatives are successful and the market for Canadian crude oil is rebalanced, Flint Hills might face higher prices for the western Canadian crude oil used as

feedstock in Flint Hills' refinery. In Enbridge's view, the Canadian public interest far outweighs the self-interest of a single shipper. Further, Enbridge noted the evidence that all shippers, including Flint Hills, would benefit from approval of the applications given the potential for additional and sustained volumes on the Enbridge system, greater market access, and increased flexibility in managing volumes on the system.

Enbridge submitted that, if incremental volumes of 45,000 b/d (7 154 $m^3$/d) or greater move on its system as a result of having access to southern PADD II, there would be a negligible to no toll impact for system shippers and that incremental volumes greater than 45,000 b/d (7 154 $m^3$/d) would result in a reduction in tolls. If no incremental volumes were attracted to the new market, the maximum toll impact was forecast to be approximately \$0.022/barrel (\$0.14/$m^3$). Enbridge calculated a similar toll impact for the 20" Reversal Project. While Enbridge could not forecast the actual incremental volumes that would result from the market access initiatives, it viewed both proposals as having the potential to attract incremental volumes to its system.

In Enbridge's view the proposed financial support is not a subsidy since tollpayers would receive benefits and value as a result of the NRAs. Enbridge submitted that since shippers of 90 percent of its volumes support, or do not object to, the implementation of the proposed NRAs, shippers expect to receive value from access to the new markets that is equal to or greater than the maximum toll impact arising from the NRAs. Enbridge suggested that the proposed NRAs were no more a subsidy than discounted tolls used by other Canadian oil pipelines to encourage higher volumes by shippers with other alternatives.

Enbridge argued that the financial support payments would not constitute an uneconomic entry into the market, but rather, would serve to remove an economic barrier to market entry. Similarly, Enbridge suggested that the proposed payments would not result in a threat to competition in the pipeline industry and noted that, in the current environment, major projects would not proceed without support from producers, shippers and refiners. Enbridge concluded that to allow one pipeline to implement incentive tolls designed to attract volumes to its system while not allowing a competing system to implement a market-responsive tolling mechanism would be a threat to competition.

Enbridge argued that the NEB Act does not prohibit the inclusion in tolls of costs incurred by a pipeline for the benefit of its shippers and the public. Enbridge submitted that the approval of the NRA applications would result in tolls that would be just and reasonable, not unduly discriminatory, and in the public interest. Enbridge noted that the NEB Act does not set out a specific test or a definition of just and reasonable tolls and that a cost-of-service benchmark is not necessary to evaluate whether tolls are just and reasonable. It also noted that the Board can approve a very broad array of costs or charges for recovery from shippers through tolls, and can approve measures relating to the pipeline transportation function that do not actually serve or directly affect the transportation function. In Enbridge's view, the key is whether the charges or measures relate to the provision of service or to service-related benefits to shippers.

Enbridge suggested that market access is a necessary part of the service provided to shippers on the Enbridge pipeline system, and that without access to markets, the pipeline transportation function can be of little or no use to shippers. Enbridge suggested that previous decisions by the

Board indicate that market access, particularly access to U.S. markets, is connected to service provided by Enbridge.

Enbridge also noted that the Board has previously approved tolls based on incentive tolling principles and that the proposed NRAs are entirely consistent with incentive tolling principles as they reflect the alignment of the interests of the pipeline and its shippers in finding the most timely and efficient means of ensuring access to the Cushing and the U.S. Gulf Coast markets for western Canadian crude oil. Enbridge submitted that it is important to assess whether tolls are just and reasonable from a broader perspective because fairness, and whether or not a particular toll proposal is fair, will be perceived differently by different tollpayers. In Enbridge's view, if the overall benefits of a proposed toll outweigh the potential disadvantages that may be raised by a single shipper, then that toll could be found to be just and reasonable. In this connection, Enbridge noted that a negotiated settlement is not required to have unanimous support and that the Board has established provisions for the consideration of contested settlements.

Enbridge argued that the proposed Spearhead and 20" Reversal NRAs are in the public interest because they support the efficient and effective use of existing infrastructure to both diversify market opportunities for Enbridge shippers, and enable western Canadian producers to maximize the value received for their commodity. Enbridge suggested that, from the broader public interest perspective, a consequence of not having new market access would be potential reductions in future supply.

Enbridge acknowledged Terasen's request to limit the approval of the NRA applications such that the approval could not be used as a precedent for future decisions. It noted that there are no immediate plans for other NRA applications and that the Board would assess future applications on their individual merits and relevant circumstances.

Enbridge noted the significant opportunities for benefits that could arise from access to the Cushing and U.S. Gulf Coast markets, and that both initiatives involve the utilization of existing assets, rather than new construction. Enbridge noted that it worked with stakeholders to develop the initiatives, and that the magnitude of the charges to be collected through the NRAs is reasonable since the benefits are expected to outweigh the costs. Enbridge suggested that it would not be acting prudently if it did not take steps to facilitate timely access to new markets in order to secure the opportunity for incremental volumes to move on the Enbridge system to the benefit of shippers, and to secure the opportunity for Canadian producers to maximize the value of their commodities.

Enbridge argued that the proposed use of the NRA mechanism to provide financial support to the Spearhead and 20" reversal projects was appropriate. It claimed that the proposed NRAs are an effective, efficient, familiar and transparent mechanism to facilitate the timely pre-investment in a market opportunity that will otherwise be lost. Enbridge noted that no party has proposed a specific alternative to the NRA.

Enbridge noted that the NRA approach would involve allocation of costs across the five service categories on the Enbridge system, based on Enbridge's Board approved toll design.

Enbridge noted that it is currently working to finalize a new Incentive Toll Settlement (ITS) with CAPP and asked the Board to assume for the purposes of the applications that a new ITS would be forthcoming and would contain an equivalent NRA provision. In the event that a new ITS did not contain an NRA provision, Enbridge requested the Board to approve the concept of the recovery of the cost of the market access initiative through a surcharge to Enbridge tolls, with a condition that Enbridge must apply for and receive Board approval for the specific mechanism to be used.

Enbridge noted that both Enbridge and Mobil need to make decisions about the future of the Spearhead and 20" reversal projects no later than the middle of May. Therefore, Enbridge requested that the Board consider issuing its decision with reasons to follow.

## 2.2 CAPP

According to CAPP, the NRAs are required to accommodate the anticipated growth in western Canadian crude oil supply which, in turn, requires access to new markets. CAPP noted that, over the last two years, western Canada's crude oil production has grown by over 200,000 b/d (31 797 $m^3$/d) and that this growth in crude oil production is made up of primarily heavy oil from the oil sands. CAPP estimated that by 2015 western Canada's crude oil supplies could increase by one million b/d (158 983 $m^3$/d) compared to 2004.

Access to new sources of demand is needed to consume the increase in supply. The key market for western Canadian heavy crude oil is the U.S. Midwest and this market has been virtually saturated. CAPP indicated that there has been little or no growth in demand for crude oil in the traditional market areas supplied by western Canadian producers and this is expected to continue. CAPP suggested that the market reality for heavy crude oil was that producers would have to go further downstream than Chicago.

CAPP submitted that supply growth that is not matched by demand growth results in over-supplied markets and downward pressure on prices as buyers and sellers adjust prices to clear the market. Access to new markets is needed to remove the market distortion and permit prices to be set by supply and demand in an unconstrained market. CAPP argued that the need for market access was an immediate and pressing issue as there are currently stranded barrels of Canadian crude oil.

CAPP believes that the implementation of the Spearhead and 20" reversal projects would help to alleviate the existing market constraints by increasing market access and providing additional opportunities for market demand to support increases in production and supply from western Canada.

CAPP submitted that constrained access to markets was already exerting a downward pressure on heavy oil prices and a widening of the light-heavy differential. CAPP noted that wide light-heavy differentials reduce heavy oil producers' netbacks, potentially to a point where oil sands heavy oil projects are no longer economic to develop or produce.

In CAPP's argument, it stated that the proposed Enbridge commitment to provide financial support for the two reversal projects would not constitute a subsidy that would result in a

distortion in the market. In CAPP's opinion, the issue pertained to the allocation of costs in relation to benefits, and that in this case, the costs would flow with the expected benefits. CAPP asserted that, since all the costs are transportation related and would be recovered in tolls, there would be no distortion in the market. CAPP claimed that the approval of the applications would actually remove the distorting effects of a lack of sufficient market access.

CAPP suggested that oil pipelines require certain minimum threshold volumes in order to operate and maintain batch integrity. CAPP viewed the reversal projects and their associated small volume threshold requirements as a means to overcome the economic barrier to entry into new markets.

CAPP noted that there is also a market acceptance issue for new supplies of crude oil and therefore it takes time to develop new markets. CAPP viewed the reversal projects as an opportunity for the new markets to get accustomed to accepting volumes of Canadian crude oil in a small-step fashion. The proposed reversal projects would provide producers with a strategic advantage to enter new markets in a relatively small way as opposed to making a much larger investment due to the economies of scale required to construct a new pipeline to enter the market.

CAPP disagreed with Flint Hills' suggestion that downstream contracts on the proposed reversal project should be backed up with matching transportation contracts on the Enbridge system. CAPP noted that Enbridge is a common carrier and that matching upstream transportation contracts would add to the cost of making commitments to the 20" reversal project and would detract from a competitive marketplace.

In CAPP's view, the focus of the Enbridge applications should be the recovery of costs by the Canadian pipeline in relation to benefits to the Canadian pipeline. CAPP acknowledged that producers would benefit from the reversal projects and argued that all shippers on the Enbridge system would also benefit from the opportunity for increased throughput and lower tolls. Enbridge would have the opportunity to make use of its unutilized capacity and the new markets would provide more flexibility for shippers on the Enbridge system. In the longer term, increasing supplies would provide a triple-win situation where the pipeline, producers, and the market all benefit from the increased availability of supply.

CAPP believed that the proposed use of the NRA mechanism was appropriate. It argued that the purpose of the NRA provision was to have an agreed-to cost-of-service mechanism for expeditiously handling needed expenditures that come up during the course of the multi-year incentive agreement but that are outside the agreed-to cost envelope.

CAPP questioned the relevance of examining alternatives to the proposed financial support arrangements. It asserted that the proposed use of the NRAs fits within the goals of the legislation and satisfies accepted criteria for cost recovery. CAPP further stated that the need for access to new markets is immediate and the purpose of the NRA is to have an agreed-to cost-of-service concept for handling needed expenditures that are outside the agreed-to cost-of-service envelope. With respect to alternatives, CAPP argued that any possible alternatives are not easy to move forward in a timely manner and to delay taking action on the applications would be harmful and contrary to the public interest.

CAPP submitted that it is the basic obligation of a common carrier to provide carriage, and in turn, the carrier has the basic right to charge reasonable compensation for that carriage even if those costs may be to a third party carrier.

CAPP submitted that the costs involved in Enbridge's applications are pipeline transportation-related costs that provide for a better provisioning of the entire transportation chain. CAPP suggested that, if the operator of the NEB-regulated pipeline, acting reasonably and prudently and having regard only to that NEB pipeline business would incur the costs, then those costs should be eligible for inclusion in its tolls. With respect to the proposed costs, CAPP claimed that the broad range of benefits and high level of support from stakeholders justifies the allocation of the costs across all Enbridge tollpayers. CAPP argued that even if there was some opposition general system benefits do not require a precise matching of benefit to each and every shipper or tollpayer; but, rather, general benefits to the system as a whole.

CAPP argued that it has never been in the Canadian public interest to sell commodities at less than fair market value and that the removal of constraints to the transportation of crude oil is in the public interest. CAPP suggested that the sharing of costs between pipelines to achieve greater utilization for the benefit of both is in the public interest. CAPP viewed the current applications as an example of how the public interest could be promoted by cooperation across jurisdictions. CAPP argued that if new facilities would result in a great benefit across the entire transportation chain other portions of the system should not be prevented from contributing to the costs and that it would be reasonable to recover those costs from its customers.

CAPP argued that in previous decisions the Board has emphasized the importance of facilitating the operation of broad market forces and has favoured cooperation between pipelines and the industry to develop market responsive solutions. CAPP asserted that the current applications are an example of pipelines cooperating with each other and industry, thus resulting in benefits to the entire marketplace.

With respect to Terasen's concern that approval of the Enbridge applications would result in a precedent to allow the roll-in of costs for future pipeline expansions, CAPP noted that there already is a large amount of existing precedent on the issue.

CAPP requested that the decisions with respect to the Enbridge applications be made as expeditiously as possible.

## 2.3 Mobil Pipe Line Company

Mobil argued that the reversal projects represent a triple-win for producers, pipelines, and the markets which will see a new source of crude oil supply. Mobil suggested that the merits of the two projects are reflected by the level of support that they have received and noted that only one shipper, Flint Hills, is opposed to Enbridge recovering the financial support for these projects through its tolls. Mobil claimed that the high level of support for the applications is one of the best indications that each of the projects would have benefits which exceed the maximum toll increase impact of approximately two cents per barrel for each project.

Mobil believes that most, if not all, of the volumes to be transported on its 20" pipeline would originate on the Enbridge mainline. It noted that the Express system is essentially full and that volumes transported on Express are moving to an existing market. Mobil indicated that the Enbridge system has available capacity to accommodate the two reversal projects and that the Mustang Pipeline would be able to accommodate all volumes tendered to it over the next five years.

According to Mobil the proposed Enbridge commitment to contribute $US10 million per year for five years translates into a maximum increase in Enbridge's mainline toll of approximately two cents per barrel. This maximum increase is based on the assumption that no incremental volumes would be transported on the Enbridge line as a result of the 20" Reversal Project. Mobil noted that, to the extent that any incremental volumes flow on the Enbridge mainline, the two cents per barrel would be reduced.

Mobil submitted that whether Enbridge should be allowed to recover the proposed costs in its tolls is a matter relating to a toll and is therefore directly authorized under section 59 of the NEB Act. In Mobil's view the question was not whether the Board can approve the costs but rather whether or not the financial support expenditures should be allowed to be recovered in Enbridge's tolls. Mobil indicated that, if Enbridge's applications are approved, it would provide immediate and long-lasting benefits to Enbridge's shippers as well as to western Canadian producers.

Mobil indicated that, while the net book value of its pipeline is under $US 7 million, it is an extremely valuable asset given its location in the market. Mobil indicated that if a decision was rendered prior to 15 May 2005, this would allow sufficient time to undertake the necessary construction activities to achieve a start-up prior to the end of 2005. Mobil submitted there was no assurance that if the application was not approved in a timely manner its pipeline would remain under present ownership and available to transport Canadian crude oil to the U.S. Gulf Coast.

## 2.4 Terasen

Terasen did not oppose expanding market access for western Canadian crude oil production. It noted the importance for producers of the Spearhead and 20" reversal projects and therefore did not oppose the reversal projects. However, Terasen did have concerns with Enbridge's proposed recovery in tolls of financial support for the reversal projects.

Terasen acknowledged that the burden of expanding pipelines into new markets may fall disproportionately on the initial users. Producers at the forefront of market development may absorb substantial costs or bear additional risks associated with shipping commitments for new pipeline facilities while a new market is developed. Producers who come along later reap the benefit of the new market without sharing in all of the costs or risks borne by producers who were at the forefront in developing the market.

Terasen indicated that it is not so much concerned with the potential impacts of the Spearhead or Mobil proposals, but with the impact of a broader application of Enbridge's approach in this case. It requested that if the Board was prepared to accept the Enbridge proposal in this

proceeding the Board's decision should not be used as a precedent for Enbridge's Gateway project or other future proceedings.

As a pipeline company, Terasen was concerned about the potential impact on future pipeline projects arising from a broader application of Enbridge's approach to these project development opportunities. It claimed that the marketplace for construction of new pipelines or enhancement of existing systems is becoming very competitive with different pipeline companies formulating various proposals to access the same markets. Terasen noted that since the Enbridge system is much larger than Terasen's, it would have a significant competitive advantage from its ability to absorb subsidies at a lower cost per barrel. Terasen suggested that, if Enbridge's approach were to be used as precedent for projects such as Gateway, Enbridge would have a significant competitive advantage. Therefore, for Terasen, the issue was broader than just the Spearhead and 20" reversal projects.

## 2.5 Flint Hills

In final argument Flint Hills stated that it was not opposed to Canadian producers seeking new crude oil markets nor to the reversals of the Spearhead pipeline and the Mobil 20" pipeline. Flint Hills stated that it was opposed to the collection of financial support for the Spearhead and Mobil Projects in Enbridge's Canadian mainline tolls. Flint Hills urged the Board to deny the applications and suggested that if the benefits were so significant parties who support the reversal initiatives could develop alternatives to obtain access to the Cushing and Gulf Coast markets.

Flint Hills claimed that the benefits associated with the provision of financial support for the reversal projects were either mischaracterized or overstated. Flint Hills asserted that the claim that the financial support provided would result in increased throughput on the Enbridge system and an associated decrease in tolls was misleading. Flint Hills noted that Enbridge could not state with certainty what level of incremental volumes would result from the initiatives and that there is a possibility that volumes destined for the Mobil pipeline would be transported on the Express system. Moreover, Flint Hills argued that if the financial support initiatives were not approved the available capacity on the Enbridge system would nevertheless be filled by growing supplies of Canadian heavy crude oil. Flint Hills concluded that the increase in throughput on Enbridge, along with the associated reduction in unit costs, was not dependent on the approval of the applications.

Flint Hills stated that in the event of approval of the Enbridge applications the benefit of improved prices for Canadian crude oil in Chicago and increased netbacks for Canadian producers would not be driven by market forces but rather by the uneconomic entry into the Cushing and U.S. Gulf Coast markets facilitated by the financial support agreed to by CAPP. Flint Hills indicated that access to the new markets would not be gained on a stand-alone basis and that the committed tolls to be paid by Spearhead and Mobil shippers are insufficient to proceed with the reversal projects. In its view, the provision of financial support is inconsistent with market-determined pricing. Flint Hills further argued that higher prices at Chicago would result in higher costs for Canadian consumers.

Flint Hills disagreed that the committed tolls on the Spearhead and 20" reversal projects were market based and suggested that to be considered market based the pipelines' entire revenue requirement would have to be derived from tolls without support from a third-party. It further suggested that the pipeline should bear the costs of any discount from a full cost-of-service toll.

Flint Hills argued that the NRA financial support initiatives were contrary to sound regulatory principles including stand-alone tolling and the user-pay principle. Flint Hills indicated that neither the Spearhead nor the 20" reversal projects would recover the full cost of their services through toll revenues and therefore violated the stand-alone principle. In addition, Flint Hills argued that a regulated enterprise should not provide financial support for initiatives outside of the services provided by the regulated facility. In Flint Hills' view if Enbridge were to collect financial support to be transferred to other pipelines Enbridge would not be acting in a manner consistent with the stand-alone principle.

Flint Hills indicated that the concept of user-pay should be applied to tolling matters and that tolls should be designed to be as cost-based as practicable so that users of the system bear financial responsibility for the costs incurred to transport their commodity. Flint Hills suggested that the user-pay principle contemplates that tolls would reflect expenditures related to a particular service between receipt and delivery points.

With respect to the recovery in tolls of costs associated with the proposed financial support commitments for the reversal projects, Flint Hills submitted that Enbridge would not be providing any service on the mainline to warrant an increase in its tolls. Flint Hills disagreed with Enbridge's explanation of the services that it would provide and argued that Enbridge only provides transportation services to the international border where it transfers custody of crude oil to another pipeline. Therefore, in Flint Hills' view, Enbridge does not provide service to PADD II, and therefore could not be considered as expanding its service to include markets in Cushing and the Gulf Coast. Flint Hills also disagreed that the administration of the transfer of funds represents the provision of a service on the Canadian mainline. Flint Hills also challenged Enbridge's suggestion that the provision of financial support for the reversal projects would facilitate commerce within the mainline by enabling trading among shippers so that parties can move barrels to new markets. Flint Hills stated that the Enbridge proposal does not pertain to the receipt and delivery of crude oil on the Canadian mainline system.

Flint Hills questioned the Board's authority to approve the recovery of costs associated with the proposed financial support payments by Enbridge to the Spearhead and Mobil 20" reversal projects. In this regard, Flint Hills asserted that the Enbridge mainline does not provide transportation service outside of Canada and that tolls must be limited to costs arising from or associated with the provision of transportation service between receipt and delivery points within Canada.

Flint Hills claimed that one of the outcomes of the Enbridge applications is the creation of an unlevel playing field among pipelines. Flint Hills noted that, as a large pipeline, Enbridge has a competitive advantage over the Trans Mountain and Express pipeline systems with its ability to roll in costs and incur a substantially lower toll impact. Flint Hills argued that Enbridge could take advantage of rolled-in costs that would not be feasible on the Trans Mountain or Express system to attract volumes away from its competitors.

As a shipper on the Enbridge system Flint Hills submitted that while it would incur a toll increase as result of an approval of the Enbridge applications there would not be an enhancement of service related to that toll increase.

## 2.6 Other Parties

### EnCana Corporation

EnCana supported the Enbridge applications and noted that western Canadian crude oil producers are facing large differentials between the market price for heavy crude oil and West Texas Intermediate crude oil as a result of limited market access. EnCana stated that the proposed market extensions would develop new markets for Canadian crude oil and serve to moderate the downward pressures on the price for heavy crude oil.

EnCana also submitted that the NRAs would ensure that the Enbridge system would be fully utilized and that the expansion of the market would provide a benefit to Enbridge and all stakeholders.

### Imperial Oil

Imperial Oil supported the Enbridge applications and stated that approval of the applications would result in just and reasonable tolls.

### Shell Canada Limited

Shell supported the Enbridge applications based on the need for increased market access for western Canadian crude oil.

### Suncor Energy Marketing Inc.

Suncor expressed its support for the Enbridge applications based on its belief that the initiatives would increase utilization and lower tolls on the Enbridge system and would provide Canadian crude oil producers with greater market access and better netback prices.

## Chapter 3

# Views of the Board

The oil transportation sector has undergone a significant transition over the past two decades. Since market deregulation in the 1980s and the implementation of the *North American Free Trade Agreement*, Canadian and U.S. oil markets have increasingly evolved into an integrated North American market. This integrated market is supported by a complex network of interconnecting pipelines between sources of supply and regional markets. For example, a refiner located in the Chicago market has a number of options and can obtain supply from several different sources including U.S. domestic production, imports from the U.S. Gulf Coast, and western Canada.

Transportation paths are often determined as the result of price signals at supply and market regions throughout North America. Producers are continuously seeking to maximize the value received for the commodity they produce, while consumers seek to obtain the lowest cost alternative to meet their requirements. Economically efficient outcomes are achieved when both producers and consumers are able to effectively achieve these goals.

To obtain economically efficient outcomes there must be adequate transportation infrastructure to connect supply to markets. When there is a lack of sufficient pipeline capacity between two locations, crude oil supplies can become "trapped" in one region causing a disconnect from those prices reflected in the larger integrated market. In a disconnected region the price of crude oil can be significantly higher or lower than the rest of the market. Prices in a disconnected region will tend to move to the point where the price would be determined based on the available supply and demand in that particular region rather than the requirements and prevailing price of the larger integrated market.

In a healthy market innovation occurs as new ideas are tested and risks are taken. Innovation can promote dynamic efficiency and contribute to efficient responses to changing supply and demand patterns. In the regulatory context, an implication of this principle is that the tools provided to pipelines to meet market requirements will vary depending on the specific market circumstances. Innovation which contributes to economically efficient responses to changing market conditions should be encouraged except when, in considering the public interest, the costs outweigh the benefits.

As commodity markets have become more competitive pipelines have had to adapt to become more innovative and responsive to meet the needs of their customers. For example, desires by shippers for improved operating and capital cost efficiency, toll reductions and stability, and maximization of system utilization have resulted in a number of incentive settlement agreements that promote a greater alignment of a pipeline's interests with its shippers. Over the past decade Enbridge has successfully operated within the context of multi-year incentive tolling agreements. Similarly, efforts to improve the efficiency of cross-border transportation have resulted in joint international tariffs providing a single toll for crude oil on systems that cross the international border for deliveries to various points in the U.S. Going forward, as pipeline companies compete

for new business opportunities, they need to develop innovative responses to demands from shippers for adequate levels of service and for increasing levels of flexibility in service options. These responses must be balanced by the need to set transportation tolls at levels that will retain existing shippers and attract new volumes to the system.

Over the past two decades the regulatory environment has moved beyond the constraints of full cost-of-service regulation and has progressively adapted to embrace developments in the market, including incentive settlement agreements and joint international tariffs. The Board has encouraged and enabled this flexibility and innovation, for example, through its *Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*, and by recognizing that the market environment in many cases lies somewhere between a pure monopoly and a fully competitive structure. However, when confronted with these innovative arrangements between pipeline companies and shippers, the Board must have regard to the public interest, the reasonableness and prudency of costs, and ensuring that there is no undue discrimination between shippers.

There is a general consensus that western Canadian crude oil production has grown significantly and will continue to grow due to the development of the oil sands. The Board notes the Enbridge and CAPP evidence that by 2015, western Canadian crude oil supply could increase by one million b/d (158 983 $m^3/d$) compared to 2004. While there is sufficient capacity on the Enbridge system to accommodate incremental volumes, the evidence also indicates that the northern PADD II markets are virtually saturated with Canadian heavy crude oil and that new markets are required. Some parties indicated that constrained access to markets capable of processing heavier grades is exerting a downward pressure on heavy oil prices and widening the light-heavy price differentials for western Canadian production. The Board notes the evidence in this proceeding that this has already had a negative effect on western Canadian producers of heavy crude oil and could affect the economics of oil sands development. The Board is of the view that transportation access to additional markets is required to accommodate growing supplies from the oil sands. The Cushing and U.S. Gulf Coast markets with their large refining capacity (almost seven million b/d) and ability to process crude oil from the oil sands appear attractive to many producers. A number of parties emphasized to the Board the importance of a timely response to this market access issue.

Enbridge characterized its applications as a response to opportunities to secure timely and efficient access to new markets for western Canadian crude oil that would provide benefits for both producers and shippers on the Enbridge system. The Enbridge applications seek approval to use a toll based mechanism for the purpose of collecting financial support for the Spearhead Pipeline Project and the 20" Reversal Project. The Board notes Enbridge's evidence indicates that both applications are a result of extensive dialogue with CAPP and that, with the exception of Flint Hills, Enbridge shippers either support the initiative or do not oppose the collection of funds to support the reversal projects.

The Board notes the Enbridge applications seek approval to recover the costs of the proposed financial support associated with the two projects through the NRA mechanism of the 2000 ITS. However, final tolls for 2005 and beyond, including costs incurred by Enbridge in relation to the Spearhead and Mobil 20" reversal projects, will not be established pursuant to the 2000 ITS. Accordingly, the Board has not found it necessary to determine whether the proposed costs were

contemplated by the parties to the 2000 ITS or would otherwise be within the scope of Section 7 of the 2000 ITS.

Stakeholders have entered into discussions regarding the extension or replacement of the 2000 ITS. The Board cannot presume that those discussions will be successful, or what will be the result of any contested or uncontested consideration of applications related to Enbridge tolls. Therefore, the Board has considered whether the costs resulting from the proposed financial support arrangements are reasonable and ought to be recovered in tolls, independent of the expired 2000 ITS and without presuming any particular method of toll calculation for Enbridge in 2005 and beyond.

The Board has considered a number of factors in its assessment of the Enbridge applications. These include the growing oil sands production, market requirements, timeliness of new market access, impacts on existing shippers, level of shipper support, and potential system benefits.

The Board notes the evidence that western Canadian crude oil production is expected to grow with some forecasts indicating that production from the oil sands is likely to increase by one million barrels per day by 2015. Markets in the U.S. Midwest are becoming saturated and therefore new markets such as Cushing and the U.S. Gulf Coast, with almost seven million b/d of refining capacity, are required for this growing oil sands production.

The need to provide access to this market is immediate. Enbridge and Mobil have indicated that they wish to begin work without delay and have their pipelines in service by the end of 2005 or the first quarter of 2006. The proposal by Enbridge offers an expeditious means of handling the required expenditures.

The Board notes the evidence that traditional cost-of-service tolls on the reversed pipelines would not attract shippers, and that to be economically feasible, these projects require an innovative toll structure and financial support in order to penetrate the new markets. The Board also notes that CAPP has agreed to the provision of financial support for the proposed projects and, as a result of the open seasons for capacity on the reversal projects, significant levels of firm transportation commitments were entered into by shippers. The Board further notes the evidence that the respective pipelines will bear the risk that the market demand for Canadian crude oil will develop so that sufficient volumes would be attracted to the reversal projects after the five-year term of the proposed NRAs. Therefore, no further support from Enbridge shippers would be required. The Board is of the view that there is an adequate level of market support for the proposed reversal projects, the associated tolling structures, and the collection of financial support through tolls on the Enbridge Canadian mainline. The Board is also of the view that Enbridge has acted prudently to ensure that its system shippers would not bear any risks beyond the five-year term of the support agreements.

The Board notes that if there were no incremental volumes attracted to the new markets, the toll effect is forecast to be approximately \$0.022/barrel (\$0.014/cubic metre) for each of the reversal projects. However, if incremental volumes of 45,000 b/d (7 154 $m^3$/d) or greater result from each of the respective reversal projects and those volumes move on Enbridge, there will be a negligible to positive toll impact. The Board is of the view that the maximum toll impact

appears to be reasonable relative to prevailing tolls[2] on Enbridge and the pricing relationship that currently exists between light and heavy Canadian crude oils.

The Board notes that no party to the proceeding objected to producers seeking new markets for western Canadian crude oil. Similarly, no party to the proceeding was opposed to the reversal of either pipeline. With the exception of Flint Hills, all Enbridge shippers either support, or do not oppose the proposed financial support arrangements. These shippers represent 90 percent of the volumes on the Enbridge system. Moreover, CAPP which through its membership represents 83 percent of the volumes shipped on Enbridge was involved in the negotiation of the proposed financial support arrangements. Non-CAPP members, who represent the remaining 17 percent of Enbridge volumes, have not contested the NRA applications. In this instance, the Board is persuaded that there is a high level of support for the reversal projects and Enbridge's applications to collect financial support for the initiatives through its tolls.

While producers are clearly expected to benefit from the removal of market access constraints, the Board is of the view that non-producing shippers, including Flint Hills, will also benefit from the reversal initiatives. These benefits include the potential for lower tolls due to incremental throughput on the Enbridge system, the availability of additional markets, and greater flexibility for shippers in managing their system volumes.

The Board is of the view that the Enbridge applications would result in the efficient use of existing infrastructure, enable access to new markets in a timely manner, and help to ensure that adequate markets are accessible to accommodate growth in supply. The evidence supports Enbridge's position that the initiatives will provide benefits to producers, the pipeline, and its shippers, and that the proposals enjoy a very high level of support. Based on the high level of support for the Enbridge proposals and the relatively small increment to Enbridge tolls, the toll impact appears to be fair.

For the above reasons, the Board finds it reasonable and prudent for Enbridge to enter into the proposed contractual commitments to provide financial support to the Spearhead and 20" reversal projects, and to incur the associated costs. Having found that it is prudent for Enbridge to incur these costs, and that the costs will result in general benefits to the Enbridge system and its shippers, the Board finds it reasonable that the costs be included in the otherwise applicable Enbridge annual revenue requirement and recovered from all shippers based on Enbridge's Board approved toll design.

After careful consideration of the legal submissions of parties, the Board does not find persuasive the argument of Flint Hills that the Board lacks authority to approve the recovery of the proposed costs in tolls. Having found that the costs will be reasonably and prudently incurred in relation to the operation of the Canadian system, it would be inconsistent and contrary to well established rate-making principles for the Board to find that the same costs could not be recovered from the users of that system.

With respect to Terasen's concern that Enbridge may apply in the future to roll in the costs of other projects under an NRA mechanism or otherwise, the Board finds it appropriate to

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2 The currently approved toll for transportation of heavy petroleum from Edmonton, Alberta to Gretna, Manitoba, including terminalling and tankage charges, is approximately \$1.40/barrel (\$8.823/m³).

comment. The Board notes that the concept of averaging pipeline system costs, including expansion costs, over the tolls charged to all system users is a well established approach. However, the Board recognizes that this approach may not always be appropriate. In any event, the Board has previously indicated that it is not strictly bound by its earlier decisions or the principle of *stare decisis*[3]. In the exercise of its statutory discretion, the Board must and will continue to consider each case on its own merits based on the record before it.

The Board is of the view that Orders TO-01-2005 and TO-02-2005 will result in tolls that are just and reasonable and not unduly discriminatory.

3 National Energy Board RH-2-98 Reasons for Decision, BC Gas Utility Ltd. (Access and Tolls), March 1999 at p. 14; and National Energy Board RH-1-2000 Reasons for Decision, Maritimes & Northeast Pipeline Management Ltd. (Tolls), August 2000 at p. 39.

Chapter 4

# Disposition

The foregoing constitutes our Reasons for Decision in respect of the applications considered by the Board in the RH-1-2005 proceeding.

In response to requests received from several parties during the RH-1-2005 proceeding, the Board's Decisions on the applications, Orders TO-01-2005 and TO-02-2005, were released on 28 April 2005 in advance of the Board's Reasons for Decision. Orders TO-01-2005 and TO-02-2005 have been reproduced in Appendices I and II, respectively.

K.W. Vollman
Presiding Member

J.S. Bulger
Member

E. Quarshie
Member

Calgary, Alberta
June 2005

## Appendix I

# Order TO-01-2005

**IN THE MATTER OF** the *National Energy Board Act* and the regulations made thereunder;

**AND IN THE MATTER OF** an application filed with the National Energy Board by Enbridge Pipelines Inc. (Enbridge) under File 4200-E101-6 for certain orders respecting tolls pursuant to Part IV of the Act.

**BEFORE** the Board on 28 April 2005.

**WHEREAS**, Enbridge filed an application, dated 7 January 2005, pursuant to Part IV of the Act, for approval of a Non-Routine Adjustment or equivalent mechanism to enable Enbridge to contribute financial support to an initiative to extend transportation service for crude petroleum supplies into the Cushing, Oklahoma area (Application);

**AND WHEREAS**, the Application proposes the recovery in Enbridge's Canadian pipeline tolls of ten million dollars (U.S. currency) per year for five years to support an extension of service via the Spearhead Pipeline from Chicago, Illinois to Cushing, Oklahoma;

**AND WHEREAS**, the Board, on 21 January and 17 February 2005, issued procedural directions for the hearing of the Application, together with a separate application filed by Enbridge on 8 February 2005, in a proceeding identified as RH-1-2005;

**AND WHEREAS** an oral public hearing was held in Calgary, Alberta between 7 April and 12 April 2005, during which time the Board heard the evidence and argument presented by Enbridge and RH-1-2005 Parties;

**AND WHEREAS** the Board's decisions on the Application are set out in this Order;

**AND WHEREAS** the Board has considered the evidence and submissions, and has found that the tolls that will result from the decisions outlined in this Order are just and reasonable and not unduly discriminatory;

**AND WHEREAS** the Board will release its Reasons for Decision on the matters considered in the RH-1-2005 proceeding in due course;

**THEREFORE, IT IS ORDERED**, pursuant to Parts I and IV of the Act, that:

1. The Board approves an addition to the otherwise applicable Enbridge annual revenue requirement in the amount of ten million dollars (U.S. currency) per year for five years, calculated in Canadian funds, to be effective no earlier than the in-service date of the Spearhead Pipeline, to be used to support an extension of service via the Spearhead Pipeline to the Cushing, Oklahoma area.

2. The Board approves the allocation of the resulting toll increases across all service categories on the Enbridge system based on Enbridge's Board approved toll design.

3. Prior to the effective date of the resulting toll increases, Enbridge shall file with the Board a copy of the executed agreement between Enbridge Pipelines Inc. and the owner of the Spearhead Pipeline, reflecting all terms and conditions associated with the financial commitment of Enbridge for the purpose outlined above.

4. Prior to the effective date of the resulting toll increases, Enbridge shall file with the Board a description of the specific mechanism for recovery of such funds through tolls.

5. Enbridge shall file annually with the Board, no later than in its application for final tolls, the following:
   a) a calculation of funds collected in tolls pursuant to this Order during the prior year (in Canadian currency);
   b) a list of amounts remitted to the appropriate Spearhead entity during the prior year (in U.S. currency), including the dates of such remittances; and
   c) a calculation of variances between (a) and (b) above, including identification of the exchange and interest rates employed in such calculation.

NATIONAL ENERGY BOARD

Michel L. Mantha
Secretary

## Appendix II

# Order TO-02-2005

**IN THE MATTER OF** the *National Energy Board Act* and the regulations made thereunder;

**AND IN THE MATTER OF** an application filed with the National Energy Board by Enbridge Pipelines Inc. (Enbridge) under File 4200-E101-7 for certain orders respecting tolls pursuant to Part IV of the Act.

**BEFORE** the Board on 28 April 2005.

**WHEREAS**, Enbridge filed an application, dated 8 February 2005, pursuant to Part IV of the Act, for approval of a Non-Routine Adjustment or equivalent mechanism to enable Enbridge to contribute financial support to a market access initiative to provide access for Canadian crude to the U.S. Gulf Coast Region (Application);

**AND WHEREAS**, the Application proposes the recovery in Enbridge's Canadian pipeline tolls of ten million dollars (U.S. currency) per year for five years to support a Mobil Pipe Line Company initiative to reverse the flow of its 508 millimetre pipeline;

**AND WHEREAS**, the Board, on 17 February 2005, issued procedural direction for the hearing of the Application, together with a separate application filed by Enbridge on 7 January 2005, in a proceeding identified as RH-1-2005;

**AND WHEREAS** an oral public hearing was held in Calgary, Alberta between 7 April and 12 April 2005, during which time the Board heard the evidence and argument presented by Enbridge and RH-1-2005 Parties;

**AND WHEREAS** the Board's decisions on the Application are set out in this Order;

**AND WHEREAS** the Board has considered the evidence and submissions, and has found that the tolls that will result from the decisions outlined in this Order are just and reasonable and not unduly discriminatory;

**AND WHEREAS** the Board will release its Reasons for Decision on the matters considered in the RH-1-2005 proceeding in due course;

**THEREFORE, IT IS ORDERED**, pursuant to Parts I and IV of the Act, that:

1. The Board approves an addition to the otherwise applicable Enbridge annual revenue requirement in the amount of ten million dollars (U.S. currency) per year for five years, calculated in Canadian funds, to be effective no earlier than the in-service date of the Mobil Pipe Line Company 20" Reversal Pipeline Project, to be used to support this initiative intended to provide access for Canadian crude to the U.S. Gulf Coast region.

2. The Board approves the allocation of the resulting toll increases across all service categories on the Enbridge system based on Enbridge's Board approved toll design.

3. Prior to the effective date of the resulting toll increases, Enbridge shall file with the Board a copy of the executed agreement between Enbridge Pipelines Inc. and Mobil Pipe Line Company, reflecting all terms and conditions associated with the financial commitment of Enbridge for the purpose outlined above.

4. Prior to the effective date of the resulting toll increases, Enbridge shall file with the Board a description of the specific mechanism for the recovery of such funds through tolls.

5. Enbridge shall file annually with the Board, no later than in its application for final tolls, the following:
   a) a calculation of funds collected in tolls pursuant to this Order during the prior year (in Canadian currency);
   b) a list of amounts remitted to Mobil Pipe Line Company during the prior year (in U.S. currency), including the dates of such remittances;
   c) a calculation of variances between (a) and (b) above, including identification of the exchange and interest rates employed in such calculation; and
   d) an itemized account of any amounts to be collected in tolls in the year in relation to indirect costs incurred by Enbridge as a result of the agreement between Enbridge and Mobil Pipe Line Company, including description of the activity or circumstance giving rise to such charges.

NATIONAL ENERGY BOARD

Michel L. Mantha
Secretary